

## SECTION 10.0 ADMINISTRATION AND PROCEDURES

### 10.1 ZONING ENFORCEMENT

**10.1.1 Building Commissioner.** The Building Commissioner shall be charged with the enforcement of these By-Laws, and shall be deemed for such purposes as the Zoning Enforcement Officer.

**10.1.2 Permit Required.** No building or structure shall be erected, altered or moved in Foxborough without a written permit issued by the Building Commissioner. Such permits shall be applied for in writing to the Building Commissioner. The Building Commissioner shall not issue any such permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of these By-Laws, except as may have been authorized by Special Permit or variance issued by the Board of Appeals, Planning Board, or the Board of Selectmen, provided a written copy of the decision governing any such Special Permit or variance be attached to the application and to the resulting building permit issued. One (1) copy of each such building permit as issued, including any conditions or restrictions attached thereto, shall be kept on file in the office of the Building Commissioner.

**10.1.3 Enforcement.** The Building Commissioner, upon being informed in writing of a possible violation of these By-Laws or on his or her own initiative, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The Building Commissioner, on evidence of any violation after investigation and inspection, shall give written notice of such violation to the owner and to the occupant of such premises. The Building Commissioner shall demand in such notice that such violation be abated within a reasonable time that is designated therein by the Building Commissioner. Such notice and demand may be given by mail addressed to the owner at the address appearing for him on the most recent real estate tax records of the Town and to the occupant at the address of the premises of such seeming violation.

**10.1.4 Penalties.** Any person, firm, or corporation who violates, disobeys, or refuses to comply with any of the provisions of these By-Laws shall be fined a penalty of up to three hundred dollars (\$300.00) per violation or occurrence and each day such violation or occurrence continues shall constitute a separate offense.

**10.1.5 Non-criminal Disposition.** In addition to the procedures for enforcement as described above, the provisions of these By-Laws may also be enforced by the Building Commissioner by non-criminal complaint pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of these By-Laws shall be fifty dollars (\$50.00) for the first offense; one hundred dollars (\$100.00) for the second offense; and three hundred dollars (\$300.00) for the third and each subsequent offense.

## **10.2 BOARD OF APPEALS**

**10.2.1 Establishment.** The Board of Appeals shall consist of three (3) regular members and two (2) associate members to be appointed in accordance with Section 4 of Article II of the Town of Foxborough General By-Laws, and Massachusetts General Laws, Chapter 40A, Section 12. The chairperson of the Board of Appeals may designate any such associate member to sit on the Board of Appeals in case of absence, inability to act, or conflict of interest on the part of any regular member thereof, or in the event of a vacancy on the Board of Appeals until said vacancy is filled in the manner provided in said Section 4 of Article 11 of the Foxborough General By-Laws and Massachusetts General Laws, Chapter 40A, Section 12.

**10.2.2 Powers.** The Board of Appeals shall have the following powers:

1. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Massachusetts General Laws, Chapter 40A, or by any officer or board of the Town or by any person aggrieved by any order or decision of the Building Commissioner or any other administrative official in violation of any provision of said Chapter 40A or any by-law adopted thereunder. In exercising this power, the Board of Appeals may, in conformity with the provisions of these By-Laws, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.
2. To hear and decide applications for Special Permits as provided in these By-Laws, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.
3. To authorize a variance upon petition or appeal with respect to a particular parcel of land or to an existing building thereon from the terms of these By-Laws where, owing to circumstances relating to the soil conditions, shape or topography of such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of these By-Laws would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of these By-Laws, but not otherwise. The Board of Appeals shall not have authority to authorize a use variance.
4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in Massachusetts General Laws, Chapter 40B, Sections 20-23.

**10.2.3 Rules and Regulations.** The Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of these By-Laws for conduct of its business and otherwise carrying out the purposes of these By-Laws and Massachusetts General Laws,

Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

**10.2.4 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

### **10.3 PLANNING BOARD**

**10.3.1 Establishment.** The Planning Board has been established pursuant to Massachusetts General Laws, Chapter 81A.

**10.3.2 Powers.** The Planning Board shall have the following powers:

1. To hear and decide applications for Special Permits as provided in these By-Laws, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Planning Board.
2. To review and decide applications for site plan approval.

**10.3.3 Rules and Regulations.** The Planning Board shall adopt rules and regulations not inconsistent with the provisions of these By-Laws for conduct of its business and otherwise carrying out the purposes of Massachusetts General Laws, Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

**10.3.4 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

### **10.4 SPECIAL PERMITS**

**10.4.1 Special Permit Granting Authority.** Where specifically designated in these By-Laws, the Board of Appeals, Planning Board, or Board of Selectmen shall act as the Special Permit Granting Authority.

**10.4.2 Criteria.** Special Permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in these By-Laws, the determination shall include consideration of each of the following:

1. Community needs served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;

4. Neighborhood character and social structures;
5. Impact on the natural environment; and
6. Potential economic and fiscal impact to the Town, including impact on Town services, tax base, and employment.

**10.4.3 Rules and Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this Section 10.4. An application for a Special Permit shall be filed in accordance with any such rules and regulations.

**10.4.4 Conditions.** Special Permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of these By-Laws.

**10.4.5 Fees.** The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for Special Permits.

**10.4.6 Lapse.** A Special Permit shall lapse in two (2) years if a substantial use or construction has not begun under the permit within said two (2) years, except for good cause. The Special Permit Granting Authority may establish a shorter period if it so votes on a specific application.

## **10.5 SITE PLAN REVIEW**

**10.5.1 Purpose.** Site Plan Review has been adopted for the following purposes:

1. To maintain the integrity and character of all zoning districts and adjoining zones by insuring that the development complies with these By-Laws and that the purposes as stated in Section 1.0 of these By-Laws are fulfilled.
2. To insure that development that is subject to this review is planned and designed to minimize impacts on the environment, its abutters and the community.
3. To provide an orderly review procedure where site plans of proposed projects can be approved with reasonable conditions which will further the purposes of these By-Laws.

**10.5.2 Authority.** The Planning Board shall hear and decide all petitions for Site Plan Review in accordance with the provisions of this Section 10.5.

**10.5.3 Applicability.** Site Plan Review is required for:

1. Any new building, and any addition to or any change of use of a predominantly nonresidential building in any zoning district. This shall include the construction of a

new building on a previously developed lot. When an addition is proposed to an existing building, the Planning Board reserves the right to review the existing structure and site.

2. Any alteration of land greater than 1,000 square feet or change of use of land except for one (1) and two (2) family residential, agricultural, horticultural, floriculture, or viticulture uses.

### **10.5.3 Exemptions.**

1. For an addition of less than one thousand (1,000) square feet to an existing building, the Planning Board may waive any or all of these requirements.
2. Site Plan Review is not required for those uses that require a Special Permit from the Planning Board, provided that all other requirements of this Section 10.5 shall apply.
3. The Planning Board shall not require the completion of an environmental impact report pursuant to Section 10.6 of these By-Laws if in connection with the development that is the subject of the Site Plan Review process the applicant is required to complete a MEPA environmental impact report ("EIR") in accordance with applicable state law, provided that such EIR is provided to the Planning Board sufficiently in advance of the Planning Board rendering its Site Plan Review decision so that the Board has adequate time to review the EIR.

**10.5.4 Application Process.** All applications for Site Plan Review shall be submitted to the Planning Board or the Town Planner containing all of the information noted herein. The applicant is encouraged to meet with the Town Planner informally prior to submittal. The application shall include the following:

1. The completed application form and the applicable fee to address the administrative, advertising and review costs of the Town;
2. Ten (10) copies of the application package and plans;
3. Site information as required in Section 10.5.5, below; and
4. A certified list of abutters within one hundred (100) feet of the property lines.

**10.5.5 Plan Requirements.** All site plans for parcels of land under four (4) acres shall be at a scale of 1"=20'. Plans for parcels over four (4) acres shall not exceed 1"=40'. All plans shall be prepared by a qualified professional engineer, signed and stamped.

1. Plans shall have a locus at a scale of 1"=1000', the name and address of the legal owner and applicant, the zoning district and suitable space to record the action of the Planning Board.
2. The required and provided yard dimensions for each proposed and existing building shall be presented in table form.

3. The dimensions of all structures shall be clearly shown.
4. The location of existing and proposed driveways, parking, service and loading areas, and landscaping shall be shown.
5. Flood plains, wetlands, water bodies either on or off the site which could be impacted by the drainage, wooded areas to be retained or removed and existing and proposed topography at two (2) foot contours extending twenty-five (25) feet from the property lines are required.
6. Existing and proposed utility systems, screening and buffering, adequate and aesthetic lighting, signage and sewage disposal methods shall also be shown.
7. Elevation plans showing the exterior design of all proposed structures shall be submitted.
8. A separate Landscape Plan shall be submitted for facilities greater than 50,000 square feet or one hundred (100) parking spaces produced by a Registered Landscape Architect.
9. Plans and specification shall conform with Section 6.5 performance Standards.
10. The applicant shall provide, upon request, to the Planning Board, its staff, or technical review consultants copies of any submittals (plans, studies, reports, presentations, etc...) in .pdf format.

#### **10.5.6 Site Plan Review Procedure.**

1. The Planning Board shall provide copies of the application package to the Board of Selectmen, Building Commissioner, Board of Health, Board of Water and Sewer Commissioners, Police and Fire Departments, Highway Department, and Conservation Commission. To insure a timely and effective review, all comments shall be provided to the Planning Board prior to the date of the public hearing.
2. The Planning Board shall give notice of a public hearing by publication of a notice in The Foxboro Reporter and by posting a notice at Foxborough Town Hall at least seven (7) days before the hearing. Notice shall also be sent to all abutters prior to the hearing date.
3. The hearing shall be conducted no later than twenty-one (21) days after the receipt of a complete application. The Planning Board shall render a decision and file such with the Town Clerk within fifteen (15) days of the closing of the hearing. At the request of the applicant, these time periods may be extended.

#### **10.5.7 Decision.** The site plan shall be approved provided that all requirements of these By-

Laws are fulfilled. Approval will not relieve the applicant of the responsibility of obtaining other required approvals from local, state or federal agencies.

1. If the site plan does not conform with the requirements of these By-Laws, the Planning Board shall identify these deficiencies in writing and deny approval. A new site plan submittal and hearing will then be required.
2. The Building Commissioner shall not issue a building or demolition permit until the Planning Board has filed its approval with the Town Clerk, or after fifteen (15) days have elapsed from the date of the close of the hearing without a decision being filed.

#### **10.5.8 Approval Guidelines.**

1. If applicable, the applicant shall be responsible for complying with the provisions of Section 9.2 of these By-Laws. At its discretion, the Planning Board may require the completion of an Environmental Impact Statement pursuant to Section 10.6 of these By-Laws. The applicant may also be required to receive an Order of Conditions from the Conservation Commission prior to the Planning Board acting upon an application.
2. The Board may waive appropriate sections of 6.5 provided they are not applicable to the proposed development, would significantly alter the character of the neighborhood or district in which the proposal is located, or are in the public interest. Waivers shall be submitted in writing by the applicant with the submission of the Site Plan Review application. The Board must state in the decision the Section waived and the justification for the waiver.

**10.5.9 Revisions to an Approved Site Plan.** The owner or lessee of the site, the Building Commissioner, or the Planning Board may initiate a petition to change or modify a site plan approval after construction has been initiated. This may occur in the event of unforeseen site characteristics, infrastructure problems or other unexpected circumstances.

1. All changes shall be reviewed and discussed by the Planning Board at a regularly scheduled meeting prior to the completion of such on the landscape. Changes or modifications shall only be authorized in writing.
2. Changes or modifications may be allowed for an approved site plan where construction has not commenced only after review during a regularly scheduled meeting and written approval of the Planning Board.
3. The Planning Board reserves the right to require a new hearing at the expense of the applicant if it determines that a proposed change or modification is significant.

**10.5.10 Performance Guarantee; As-Built Plan.** The Planning Board may require that the conditions of approval be secured by a deposit of money or an Irrevocable Letter of Credit in the favor of the Town. This performance guarantee shall bear a reasonable relationship to the expected costs of completing the work being secured.

1. If the developer fails to fulfill the conditions of approval which are secured, the Planning Board is authorized to use the funds to complete the remaining work.
2. Upon completion of the project, the developer shall submit "as-built" plans for review.
3. Upon acceptance of the plans by the Planning Board, the developer may submit a written request for a release of the performance guarantee. All changes or modifications shall be shown on the "as-built" plans.
4. A response to a request for a release of the performance guarantee shall be within twenty-one (21) days upon receipt of such. Failure of the Planning Board to act within this time period shall constitute a release of the funds.

**10.5.12 Lapse.** Site plan approval shall lapse if construction is not commenced within twenty four (24) months from the date of approval. A new submittal and hearing will be required. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

**10.5.13 Fee.** The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

**10.5.14 Appeal.** Any decision of the Planning Board pursuant to this Section 10.5 shall be appealed in accordance with Massachusetts General Laws, Chapter 40A, Section 17, to a court of competent jurisdiction.

## **10.6 ENVIRONMENTAL IMPACT STATEMENT**

**10.6.1 Purpose.** The purpose of an Environmental Impact Statement (EIS) is:

1. to enable the officials of the Town to determine what methods shall be used to mitigate the environmental/social impacts; and
2. to minimize adverse effects on the natural resources of the Town from the requested activity.

**10.6.2 Applicability.** An EIS may be required, at the expense of the applicant, in the following cases:

1. For any nonresidential or multifamily structure or use that could have significant, deleterious environmental or social impacts on the Town;
2. For any use requiring a Special Permit or site plan approval.

**10.6.3 Disapproval.** An EIS may be the basis for disapproval by the appropriate Town board.



**10.6.4 Exemption.** If the applicant is required to file an Environmental Impact Report with the Executive Office of the Environmental Affairs of the Commonwealth of Massachusetts, the Final Environmental Impact Report may be submitted to fulfill the requirements of this Section 10.6.

**10.6.5 Requirements.** In reviewing the EIS, the appropriate Town boards will consider the degree to which water is recycled back into the ground, the maintenance and improvement of the flow and quality of surface waters, the preservation or promotion of wildlife refuges, historic sites, unique geological, botanical and archaeological features, existing or potential trails and accesses to open space areas; the health and safety of the inhabitants of the area; and the preservation of present social standards.

**10.6.6 Scope of Work.** The appropriate Town board shall develop a Scope of Work to direct the completion of the Statement. The Board may waive or add to the list of concerns noted in Paragraph D pursuant to the specifics of each project. It is recommended that the applicant meet with the board to participate in the preparation of this scope.

**10.6.7 Consultant Review.** Upon the completion of the Scope of Work, the appropriate Town board shall send out a "Request for Proposal" to specified consulting firms. The board shall review all responses and choose the optimum proposal. The applicant shall then be required to make a payment to the Town of Foxborough in the exact sum of the proposal selected. This money shall be placed in an interest bearing escrow account administered by the board pursuant to Massachusetts General Laws, Chapter 44, section 53G. Upon the satisfactory completion of the work, the consultant shall be paid and the applicant shall receive the remaining interest.

**10.6.8 Contents of Statement.**

1. Physical Environment. Provide a description and impact analysis the development will have on the general topography, vegetation, wildlife, unusual geologic, scenic and historical features, trails and open space and site relationship to the surrounding area.
2. Surface Water and Soils. Describe location, extent and type of existing water and wetlands and the proposed alterations to such, including both existing and proposed surface drainage characteristics, both within and adjacent to the project. Describe the methods to be used during construction to control erosion and sedimentation; describe approximate size and location of land to be cleared at any given time and length of time and exposure; covering of soil stockpiles; and other control methods used. Evaluate effectiveness of proposed methods on the site and on the surrounding areas. Also describe the permanent methods to be used to control erosion and sedimentation.
3. Estimate increase of peak run-off caused by altered surface conditions, and methods to be used to return water to the soils.
4. Describe sewage disposal methods and location of such. Evaluate impact of disposal methods on the quality of the surface waters and groundwater.

5. Town Services. Describe estimated traffic flow at peak periods and proposed site and off-site circulation patterns and traffic controls.
6. Describe estimated effect/impacts of the project on police and fire protection services, public works, educational services, and the water supply system.
7. The appropriate Town board may require the submission of information, which could be required by the MEPA unit if an EIR were required under applicable MEPA regulations.

#### **10.7 REPETITIVE PETITIONS**

No appeal, application or petition that has been unfavorably and finally acted upon by the Planning Board or the Board of Appeals shall be acted favorably upon within two (2) years after the date of final unfavorable action unless the Planning Board or the Board of Appeals, as applicable, finds, by a vote of four (4) members of the Planning Board or a unanimous vote of the Board of Appeals, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings, after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

1. The Planning Board shall act first when the original unfavorable action occurred at the Board of Appeals. The Board of Appeals shall act first when the original unfavorable action occurred at the Planning Board.